

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN PADILLA,

Plaintiff,

-vs-

Case No: 1:07-cv-03638-PKL

UNITED STATES,

Defendant.

_____ /

MITCHELL S. STERNBACH (#1683)

Local Counsel

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Rockville Centre, New York 11570

(516) 764-7200

_____ /

CLASS ACTION COMPLAINT UNDER RULE 9(h)

NOW COMES Plaintiff, on his behalf and other similarly situated persons, complaining against Defendant as follows:

1. Jurisdiction and venue lie in this action, Defendant being subject to service of process within this forum.
2. Jurisdiction is founded under the general maritime law for maintenance in the form of unearned wages vis-a-vis the Public Vessels Act (46 USC 781-790).
3. At all times material to issues herein, Plaintiff, and other similarly situated persons, suffered illness or injury in the service of Defendant's vessels and were thereafter paid unearned wages sans overtime they otherwise would have earned.

4. Plaintiff is entitled to unearned wages he otherwise would have earned, and, thus, seeks same, along with attorney fees.

CLASS ACTION ALLEGATIONS

Plaintiff is entitled to sue as a representative party on behalf of crewmembers who have been paid unearned wages sans overtime they would have earned, for the following reasons:

5. Joinder of all class members is not practicable because:
 - A. The class numbering according to Plaintiff's best present estimate is too numerous and/or disperse geographically.
6. The claim of Plaintiff is typical of the claims of the class.
7. Plaintiff will fairly and adequately protect the interests of the class.
8. The prosecution of separate actions by individual members of the class would create a risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct of Defendant; and
 - B. Adjudications with respect to individual members of the class would, as a practical matter, be dispositive of the interests of adjudication or substantially impair or impede their ability to protect their interest.
9. Questions of fact and law common to the members of the class predominate over any questions affecting only individual members, i.e. whether unearned wages payable is inclusive of the overtime the crewmember would have earned.
10. A class action is superior to other available methods for the fair and efficient adjudication of the controversy because it will:

- A. Avoid a multiplicity of actions;
- B. Permit the litigation of small claims otherwise sufficient to support litigation;
- C. Promote judicial economy.

WHEREFORE Plaintiff and class members pray for Judgment in an amount equal to the overtime wages to which they are entitled to during their period of entitlement to unearned wages, plus interest, costs, attorney fees and any other relief to which they are lawfully entitled in the premises.

/s/ Mitchell S. Sternbach

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Dated: April 27, 2007